IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 3961 of 2005(V)

PETITIONER:

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1. P.V. VIJAYAKUMARAN, METER READER, P.H. SECTION NO.II, KERALA WATER AUTHORITY, PATHANAMTHITTA.

2. V. SADASIVAN PILLAI, OPERATOR (HIGHER GRADE), WATER SUPPLY SECTION, KERALA WATER AUTHORITY, CHIRANHIKKARA, PUTHUMALA P.O., ADOOR.

3. ROSAMMA MATHEW, U.D. CLERK, WATER SUPPLY DIVISION, KERALA WATER AUTHORITY, ADOOR.

4. T.R. SUDHA, U.D. CLERK, P.H. DIVISION, KERALA WATER AUTHORITY, PATHANAMTHITTA.

BY ADV. SRI.ASOK M.CHERIAN

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT REGISTRAR (GENERAL) PATHANAMTHITTA.

3. THE KERALA WATER AUTHORITY, REPRESENTED BY ITS MANAGING DIRECTOR, JALABHAVAN, THIRUVANANTHAPURAM.

4. THE ASSISTANT EXECUTIVE ENGINEER, WATER SUPPLIES DIVISION, KERALA WATER AUTHORITY, PATHANAMTHITTA.

5. THE ASSISTANT EXECUTIVE ENGINEER, WATER SUPPLIES DIVISION, KERALA WATER AUTHORITY, ADOOR.

6. THE EXECUTIVE ENGINEER,

WATER SUPPLIES DIVISION,
KERALA WATER AUTHORITY, ADOOR.

7. THE EXECUTIVE ENGINEER,
P.H. DIVISION, KERALA WATER AUTHORITY,
PATHANAMTHITTA DISTRICT.

R3 TO R7 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC,KWA
R1& R2 BY GOVERNMENT PLEADER SMT. R. BINDU.
SRI.M.DINESH, SC, KWA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER DATED 23.3.1998 OF THE FIRST RESPONDENT.

EXT.P2 TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT DATED 7.1.2002

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 3961 OF 2005

Dated this the 27th day of February, 2007

JUDGMENT

CR

Petitioner is challenging Ext.P2 order whereunder the Government has ordered recovery of stamp duty from employees of the Kerala Water Authority who were granted House Building loan by the Water Authority on execution of documents without charging stamp duty. It is seen that Government vide Ext.P1 order dated 23.3.1998 exempted the employees of Water Authority from payment of stamp duty for executing documents to avail House Building loan from the Water Authority. Petitioners have executed documents without payment of stamp duty and availed loan based on Ext.P1. However, Government vide Ext.P2 dated 7.1.2002 cancelled the exemption granted vide Ext.P1 and directed recovery of stamp duty. Counsel for the petitioner contended that Ext.P2 is arbitrary, discriminatory and is against the principle of promissory estoppel. He has relied on the decision of the Supreme Court in UNION OF INDIA V. GODFREY

PHILIPS INDIA LTD., (1985) 4 SCC 369 and contended that petitioners cannot be called upon to pay stamp duty through retrospective withdrawal of exemption originally granted. Though not in the same context, the Supreme Court in the above decision held as follows:

> The doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, true to its form, stepped in to mitigate the rigour of strict law. The true principle of promissory estoppel is that where one party has by his word or conduct meade to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. The doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. This docttrine is applicable against the Government in the exercise of

> its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of this doctrine.

Stamp duty is an additional liability to the borrower. The stamp duty in this case is said to be five per cent of the loan amount, which is substantial. Petitioners have rightly pointed out that they have taken into account the exemption from stamp duty as an incentive for availing loan and the liaibility presently created through retrospective withdrawal of exemption is the result of a clear breach of promise. Even though liability for stamp duty is incurred at the time of availing the loan, it adds to increase the cost of debt-servicing because loan amount virtually gets reduced by cost of loan incurred by the borrower and therefore rate of interest has to be reduced on net loan amount. A comparable misfortune for borrowers of house-building-loan is retrospective withdrawal of income tax incentives on house building loans by Government of India which will be equally illegal and unwelcome. In the circumstances, Ext.P2 order demanding stamp duty contrary to the promise made out by Government based on which petitioners availed loan is declared arbitrary and discriminatory and

hence unenforceable. W.P. is therefore allowed directing the respondents not to recover any stamp duty from the petitioners for the loan documents and release deeds executed prior to 7.1.2002 when Ext.P2 came into force.

(C.N.RAMACHANDRAN NAIR)
Judge